

Owner of Massachusetts hair salon has shown that he is eligible for PUA benefits, because government COVID-19 mandated closures and restrictions caused him to stop working and then experience a substantial reduction in income.

**Board of Review
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Issue ID: N6-FJVD-H4DV

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny Pandemic Unemployment Assistance (PUA) benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and we reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was denied in a determination issued on November 13, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied PUA benefits in a decision rendered on February 16, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to establish that he was unemployed for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and, thus, the claimant was not eligible for PUA benefits. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner for additional evidence and testimony. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that claimant is not eligible for PUA benefits because he has not shown that he worked in Massachusetts in 2019 or 2020, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant filed a claim for PUA benefits, with an effective date of March 15, 2020.

2. The claimant filed the PUA claim using a Florida address.
3. The claimant is a Florida resident with a valid Florida Driver License.
4. Although a Florida resident, the claimant owns a hair salon in Massachusetts. The claimant has a valid Massachusetts cosmetology salon license issued by the Division of Professional Licensure which lists the salon.
5. The claimant has a 2019 Massachusetts nonresident/part-year resident income tax return and a 2019 Schedule C tax document for the Massachusetts salon.
6. In 2020, the claimant traveled from Florida to Massachusetts on or about eight times to manage and provide hair-styling services at his salon. The claimant worked in Massachusetts for four to six weeks each time.
7. In 2020, the claimant worked on or about 208 days in Massachusetts.
8. In 2019, the salon's gross sales were \$1,777,500. In 2020, the salon's gross sales were approximately \$740,670.
9. In addition to his managerial responsibilities, the claimant serviced clients for on or about eighty-five days from July 7, 2020 to April 23, 2021.
10. Due to the COVID-19 public health emergency state mandated business closures, the salon closed on or about March 17, 2020. The salon reopened, at a limited capacity due to COVID-19 social distancing guidelines, on May 26, 2020.
11. Due to the COVID-19 public health emergency state-mandated quarantine restrictions and business closures, the salon could not service as many clients as previous years and sales dramatically decreased.
12. The claimant filed for PUA benefits when, due to the COVID-19 public health emergency state mandate quarantine restrictions and business closures, his salon had fewer clients causing a dramatic reduction in the claimant's income.
13. On November 13, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits beginning the week ending February 8, 2020.
14. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant credibly testified that, in 2020, he traveled from Florida to Massachusetts on or about eight times to manage and provide hair-styling services at his salon. The claimant worked in Massachusetts for four to six weeks each time. In support of his credible testimony, the claimant offered receipts for multiple flights and car rentals evidencing his business travel to Massachusetts. In addition, the claimant produced his client appointment schedule, a record kept in the normal course of business, which shows appointments for on or about eighty-five days from July 7, 2020 to April 23, 2021. The claimant credibly testified that, due to the COVID-19 public health emergency state-mandated quarantine restrictions and business closures, the salon closed on or about March 17, 2020 and re-opened, at a limited capacity, on May 26, 2020. The claimant credibly testified that, due to the COVID-19 public health emergency state-mandated quarantine restrictions and business closures, the salon could not service as many clients as previous years and sales dramatically decreased. In support of the claimant's testimony, the claimant provided documentation evidencing that the claimant's salon's gross sales were \$1,777,500 in 2019, and due to the COVID-19 restrictions, the claimant's salon's gross sales were approximately \$740,670 in 2020. The claimant credibly testified that he filed for PUA benefits, when due to the COVID-19 public health emergency state-mandate quarantine restrictions and business closures, his salon had fewer clients causing a dramatic reduction in the claimant's income.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is not entitled to receive PUA benefits.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under § 2102 of the CARES Act of 2020 and administered by the U.S. Secretary of Labor¹. In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. Among the requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). One of those reasons is that the individual's place of employment is closed as a direct result of the COVID-19 public health emergency. § 2102(a)(3)(A)(ii)(I)(jj); *see also* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1), p. I-8.

The claimant owned and operated a Massachusetts hair salon. He is a resident of Florida, however he traveled to Massachusetts on a regular basis to manage the salon and perform work for clients.

¹Pub. L. 116-136 (Mar. 27, 2020), § 2102.

See Findings of Fact ## 6 and 7. Due to the COVID-19 public health emergency state-mandated quarantine restrictions and business closures, the salon closed on or about March 17, 2020, and reopened, at a limited capacity, on May 26, 2020. It is apparent that, while the salon was closed, the claimant could not work. This evidence establishes that, from the week beginning March 15, 2020, until the week ending May 23, 2020, the claimant was unemployed for the listed COVID-19 reason under § 2102(a)(3)(A)(ii)(I)(jj).

Thereafter, the salon could not service as many clients as previous years due to the COVID-19 state-mandated restrictions, sales dramatically decreased, and this caused a dramatic reduction in income. See Findings of Fact ## 10–12. The U.S. Department of Labor has stated that self-employed individuals who experience a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services, are eligible to self-certify under § 2102(a)(3)(A)(ii)(I)(kk). See UIPL 16-20, Change 4, Attachment I, C(1), p. I-8. Since the claimant demonstrated that his Massachusetts salon had a considerable loss in sales in 2020 due, in part, to having to operate at reduced capacity, he also qualifies for PUA benefits, beginning the week ending May 23, 2020.² See Finding of Fact # 8.

On the finding and records before us, we, therefore, conclude as a matter of law that that the claimant has shown that he was unable to work for the reason listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(jj) and (kk).

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 15, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 13, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT**

(See Section 42, Chapter 151A, General Laws Enclosed)

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

² We note, however, that the claimant stopped certifying for benefits the week ending May 23, 2020.

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

TG/rh